

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

GEORGE CALLAHAN,

Plaintiff,

V.

UNITED STATES POSTAL SERVICE et  
al.,

Defendants.

**Civil Action No. 13-3147 (SRC)**

## OPINION & ORDER

**CHESLER, District Judge**

This motion comes before the Court on the motion to dismiss the Complaint, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), for lack of subject-matter jurisdiction and failure to state a valid claim for relief, by Defendant United States Postal Service (“USPS”). For the reasons stated below, the motion to dismiss will be granted.

Plaintiff, a USPS employee, filed a Complaint with three claims of employment discrimination in violation of New Jersey’s Law Against Discrimination (“NJLAD”) in the Superior Court of New Jersey; the case was removed to this Court. The USPS responded by moving to dismiss the Complaint on the ground that, *inter alia*, Plaintiff’s exclusive remedy as a federal employee is an action under Title VII and the Rehabilitation Act. In opposition, Plaintiff disagrees, but offers no law or argument in support.

The USPS is correct. “Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e)-16, establishes the exclusive remedy for federal employees who allege discrimination in the workplace.” *Robinson v. Dalton*, 107 F.3d 1018, 1020-1021 (3d Cir. 1997). Title VII preempts

workplace discrimination claims by federal employees based on NJLAD. The motion to dismiss will be granted.

Plaintiff, in the alternative, seeks leave to amend the Complaint to assert claims under Title VII. Defendant opposes granting leave to amend on the ground that it is futile, because Plaintiff failed to exhaust administrative remedies. At this point, because this argument was made in Defendant's reply brief, Plaintiff has not had the opportunity to respond to it. Plaintiff will be granted leave to amend the Complaint to assert any claims under Title VII, and the USPS may then move to dismiss on the ground of failure to exhaust. Plaintiff would do well to draft an Amended Complaint which anticipates this.

For these reasons,

**IT IS** on this 4th day of September, 2013, hereby

**ORDERED** that Defendant's motion to dismiss the Complaint (Docket Entry No. 3) is **GRANTED**, and the Complaint is hereby **DISMISSED** without prejudice; and it is further

**ORDERED** that Plaintiff is granted leave to file an Amended Complaint within 30 days of the entry of this Order.

s/ Stanley R. Chesler  
Stanley R. Chesler, U.S.D.J